that a defendant should not, by any slip or mistake, lose the benefit of his demurrer or plea; or have it snatched from him by any technical nicety. For these reasons he may be allowed to amend, either his demurrer or plea, so as to make it as effectual as the nature of his case will allow. Where the demurrer is general to the whole bill, but cannot be thus sustained, the Court, after argument, by special leave, has permitted the defendant to demur to part of the bill only; considering it as a kind of amended demurrer, since a demurrer cannot, like a plea, be held good in one part and bad in another, *Baker* v. *Mellish*, 11 *Ves.* 68; or a demurrer may be overruled, without prejudice to the defendant's insisting by way of answer against making a particular discovery, which is, in effect, allowing the demurrer to stand for so much. *Suffolk* v. *Green*, 1 *Atk.* 450. So, too, on shewing what the amendment is, and how the slip happened, leave will be given to amend a plea; or if it be incapable of amendment, that it may be withdrawn and an entirely new one filed. The Court upon this subject exercises a sound discretion, allowing to a defendant reasonable time to put his plea in proper form, so that he may lose no advantage he can derive from presenting his defence in that shape; at the same time taking care that the plaintiff sustains no material injury by the delay. *Freeland* v. *Johnson*, 2 *Anstr.* 411; *Beam Plea. Equ.* 329.

* If the demurrer and the plea be entirely overruled, still the defendant may, in general, advance and rely upon the **149** same matter in his answer; and have the benefit of it at the hearing. *Stephens* v. *Gaule*, 2 *Vern.* 701; *Suffolk* v. *Green*, 1 *Atk.* 450; *Brownsword* v. *Edwards*, 2 *Ves.* 246; *Finch* v. *Finch*, 2 *Ves.* 491; *Baker* v. *Mellish*, 11 *Ves.* 68. But it seems to be settled, that the same matter cannot be so relied upon to protect the defendant from the disclosures prayed by a bill of discovery. *Hoare* v. *Parker*, 1 *Cox*, 224.

How far such an answer can be made available against the discovery sought by a bill praying relief, is a matter which I shall now inquire into and determine.

We have considered the several ancient modes of defence which a defendant may avail himself of; either for the purpose of intercepting the litigation at an early stage of its progress, or of protecting himself from discovery, or of meeting his opponent upon the merits at the final hearing; and we have seen with what liberality some of them may be amended so as to answer the purposes for which they were intended. The difficulty now before us is one which occurs in a case anterior to the final hearing; and may, after that, reappear, accompanied with additional embarrassment. It is produced by a new use which a defendant attempts to make of one of the ancient modes of defence. A positive negation, or matter of avoidance, embodied in an answer, is admitted to be one of the ancient established modes of defence; and the point is, whether